

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ZACHARY R. GRAHAM, KEVIN R. SHAY,

Plaintiffs,

21cv0148

ELECTRONICALLY FILED

v.

PENNSYLVANIA DEPARTMENT OF
CORRECTIONS, ET AL.,

Defendants.

MEMORANDUM ORDER OF COURT

Plaintiffs initiated this matter by submitting a Motion and Declaration in Support of Motion to Proceed *in Forma Pauperis* (“IFP”) -- which the Court granted. [ECF 12](#), [ECF 14](#). Plaintiffs filed an amended complaint on March 5, 2021 (ECF18), and a second amended complaint on May 6, 2021. [ECF 35](#). On October 18, 2021, Defendants filed a motion to dismiss the second amended complaint. [ECF 58](#).

In the second amended complaint, Plaintiffs’ claims arise out of the Department of Corrections’ (DOC’s) refusal to allow the Plaintiffs to marry one another. The DOC has a policy and procedure to which inmates must adhere in order to be permitted to marry. See, DC-ADM-821, at www.cor.pa.gov/About%20Us/Pages/DOC-Policies.aspx .

In their second amended complaint, Plaintiffs allege that they attempted to comply with the policy and procedure, and the denial of their request to marry violated several of their civil rights giving rise to the various claims raised in the complaint. Specifically, Plaintiffs alleged violations of their Fourteenth Amendment Equal Protection and Substantive Due Process rights; a “Monell” claim; and Eighth Amendment claim for cruel and unusual punishment; and Eighth

Amendment claim for excessive force; conspiracy claims under 42 U.S.C. §§ 1985, 1983, and 1986; retaliation claim under 42 U.S.C. § 1997(d); as well as various state law claims.

The Magistrate Judge filed a Report and Recommendation ([ECF 71](#)) granting in part and denying in part Defendants' motion to dismiss. A copy of the Magistrate Judge's Report and Recommendation ("R&R") was mailed to Plaintiff on March 21, 2022. Objections to the R&R were due on or before April 4, 2022. [ECF 71](#). To date, no objections to the R&R have been filed by any party.

AND NOW, this 21st day of July, 2022, upon independent review of the record, and upon consideration of Magistrate Judge Kelly's April 5, 2022, Report and Recommendation, IT IS HEREBY ORDERED that the Magistrate Judge's March 21, 2022 Report and Recommendation ([ECF 71](#)) is adopted as the Opinion of this Court, and thus, Defendant's motion to dismiss ([ECF 58](#)) is granted in part and denied in part.

Accordingly, the Court agreed to dismiss the following claims:

1. All claims brought against "John Doe" are dismissed without prejudice.
2. All claims brought against Defendant Yodis and Defendant Greenwalt are dismissed with prejudice.
3. All claims for monetary damages brought against any of the Defendants in their official capacities are dismissed with prejudice.
4. The claims asserted in accordance with 42 U.S.C. §1983 against the DOC (including Plaintiffs' Fourteenth Amendment Equal Protection and Substantive Due Process claims, Eighth Amendment claims for cruel and unusual punishment and excessive force; and the conspiracy claims under 42 U.S.C. § 1983) are dismissed with prejudice.
5. The "Monell" claim is dismissed with prejudice.

6. The retaliation claim under 42 U.S.C. §1997(d) is dismissed with prejudice.

7. The state law tort claims are dismissed with prejudice.

Although Plaintiffs' retaliation claims under 42 U.S.C. § 1997(d) and Pennsylvania law are dismissed, Plaintiff is granted leave to amend the complaint to include a First Amendment retaliation claim, if appropriate.

The motion to dismiss any remaining claims not addressed immediately above, is hereby denied.

So ORDERED this 21st day of July, 2022.

s/Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All counsel of record

The Honorable Maureen P. Kelly
United States Magistrate Judge

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